

IRS Gives Equal Billing to an Adviser Life Insurance Contract: Treats Adviser's Fee the Same as Under Adviser Annuities

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The IRS recently published a private letter ruling (No. 202341002) dealing with the tax treatment of advisory fees paid to an adviser from an “adviser life insurance contract.” Specifically, the letter ruling addressed whether the payment of such fees directly from a life insurance contract will be treated as a distribution from the life insurance contract. The letter ruling is substantially identical to 19 others issued by the IRS in connection with “adviser annuities.” Consistent with those, the recent letter ruling held that the fees were an integral part of the operation of the life insurance contract and, as such, were not treated as “amounts received” under section 72 of the Internal Revenue Code, i.e., not a distribution from the life insurance contract. The letter ruling contained the same representations as 17 of the “adviser annuity” rulings:

- The life insurance contract owner will authorize payment of the investment advisory fees from the life insurance contract's cash value.
- The fees will compensate the adviser only for investment advice with respect to the life insurance contract and not for any other service.
- The life insurance contract will be solely liable for paying the entire fee, which will be paid directly to the adviser and not the life insurance contract owner.
- The adviser will not be paid a commission for the sale of the life insurance contract.
- The advisory fees received will not exceed an annual amount of 1.5% of the life insurance contract's cash value.

Despite this favorable development, letter rulings can be relied on only by the taxpayers who receive them. The rulings do, however, reflect the IRS' thinking on how advisory fees from either annuities or

life insurance contracts, under the facts of the rulings, should be treated. Taxpayers must assess the risks before relying on the rulings, rather than obtaining their own letter ruling.

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